IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 215 OF 1999

Pundalik Vithu Patil .. Appellant

V/s

The State of Maharashtra .. Respondent

Mrs. Usha V. Kejriwal, A.P.P. for the Respondent.

CORAM : H.L. GOKHALE &
A.S. AGUIAR, JJ.

DATE : 25TH NOVEMBER 2004

P.C. :

1. This Criminal Appeal seeks to challenge the judgment and order dated 8th April 1999 passed by the 4th Additional Sessions Judge, Kolhapur in Sessions Case No.150 of 1998 wherein the Appellant - Accused was held guilty of the charge under Section 302 of I.P.C. and was ordered to be sentenced to suffer imprisonment for life.

2. The Appeal was heard by us, and Gokhale J. delivered a judgment on 5th August 2004 holding that the Accused is entitled to the benefit of Section 84 of I.P.C. and hence allowed the Appeal. The Accused was, however, directed to continue to be lodged in the Central Jail at Kolhapur since he needs psychiatric treatment. It was directed that he will continue to

remain under a psychiatrist until he certifies the Appellant to be mentally fit, and only on obtaining such a certificate that it would be open to the relatives of the Accused to move the learned Sessions Judge, Kolhapur to deliver the Accused to him/her. The applicant was also to give an undertaking to look after the Accused.

3. Aguiar J. rendered the separate judgment on 5th August 2004. He held that the Accused was not entitled to the benefit of Section 84 of I.P.C. He, however, as well directed that the Accused be continued to be given psychiatric treatment. Aguiar J., therefore, dismissed the Appeal filed by the Appellant - Accused.

4. In view of difference of opinion, the matter was referred under Section 392 of Cr.P.C. by the Hon'ble Chief Justice to a Third Judge, i.e. V.G. Palshikar J. Palshikar J. concurred with the view taken by Gokhale J. in his judgment and order rendered on 29th October 2004. Aguiar J. was also of the opinion that the Accused requires psychiatric treatment while undergoing sentence since that was a medical opinion.

5. Hence in view of the majority opinion, the following judgment and order:-

. The Appeal is allowed. The impugned judgment

and order dated 8th April 1999 passed by the 4th Additional Sessions Judge, Kolhapur in Sessions Case No.150 of 1998 is set aside. The Appellant - Accused is acquitted. However, the Appellant will continue to remain in the Central Jail at Kolhapur until, as stated above, he is certified to be fit to be released by a psychiatrist. He will continue to remain under the treatment of a psychiatrist. It is only on a certificate being given by the psychiatrist that it will be open to the relatives of the Accused to move the learned Sessions Judge, Kolhapur to deliver the Accused to him / her. The applicant will also give an undertaking to look after the Accused. If such a motion will be moved, the same will be considered in the welfare of the Accused.

6. Office to send a copy of the judgment and order to the Jailer, Central Prison, Kolhapur.

(H.L. GOKHALE J.)

(A.S. AGUIAR J.)